

## **Assembly Bill No. 2341**

### **CHAPTER 773**

An act to amend Sections 1103, 1107.5, 1108, 1110, 1113, 1155, 1808, 1809, 1900.5, 1905, 2010, 2011, 2112, 6014, 6018, 6019.1, 6020.5, 6518, 6519, 6615, 8014, 8018, 8019.1, 8020.5, 8518, 8519, 8615, 12535, 12539, 12540.1, 12550.5, 12628, 12629, 12635, 15678.4, 15678.10, 16915.5, 16954, 16960, 17350.5, 17355, 17356, 17552, and 17554.5 of, and to add Section 1905.1 to, the Corporations Code, to amend Sections 3126, 5758, and 5760 of the Financial Code, and to amend Sections 23153, 23332, 23335, and 23561 of, to add Sections 17937, 17947, and 17948.3 to, and to repeal Sections 17945, 17948.1, and 23334 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2006. Filed with  
Secretary of State September 29, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2341, Villines. Tax clearance certificate: minimum franchise tax: relief.

Existing law provides that every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state is subject to the minimum franchise tax. Liability for the minimum franchise tax begins on the earlier of the date of incorporation, qualification, or commencement of business within this state. The annual obligation to pay the franchise tax ends on the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the state.

Existing law requires a dissolving or withdrawing corporation subject to tax in this state to pay a tax for the year it ceases to do business in California. The amount of tax owed is measured by the corporation's net income for its final taxable year, but cannot be less than the minimum franchise tax.

Existing law requires, prior to the dissolution of a corporation, that the corporation is required to obtain a Tax Clearance Certificate from the Franchise Tax Board certifying that its tax liabilities, if any, have been paid, assumed, or guaranteed by bond or otherwise.

Existing law also provides that every limited partnership, limited liability partnership, and limited liability company registered in this state, qualified to transact intrastate business in this state, or doing business in this state is subject to an annual tax equal to the minimum franchise tax. Liability for the annual tax begins on the date of registration with the Secretary of State, qualification, or commencing to do business within this state. The obligation to pay the annual tax ends on the effective date of

cancellation of the entity or the date the entity ceases to do business in the state.

This bill would eliminate the requirement that, prior to dissolution of a corporation, the corporation obtain a tax clearance certificate and instead provide that the Secretary of State notify the Franchise Tax Board of the dissolution.

This bill would provide that the minimum franchise tax and the annual tax, as applicable, would not be assessed against these entities in the year that a final return is filed if the entity did not thereafter do business in California and dissolution, surrender, or cancellation of the entity is completed before the end of 12-month period following the date the final tax return was filed.

This bill would permit certain suspended corporations to seek dissolution without requiring payment of the accrued tax liability for years in which the corporation was inactive and not doing business.

This bill would also make conforming changes to existing law.

This bill would incorporate specified changes proposed by AB 339 if both this bill and AB 339 are enacted.

This bill would take effect immediately as a tax levy.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1103 of the Corporations Code is amended to read:

1103. After approval of a merger by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200), the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of outstanding shares of each class entitled to vote on the merger, that the principal terms of the agreement in the form attached were approved by that corporation by a vote of a number of shares of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, or that the merger agreement was entitled to be and was approved by the board alone under the provisions of Section 1201. If equity securities of a parent of a constituent corporation are to be issued in the merger, the officers' certificate of that constituent corporation shall state either that no vote of the shareholders of the parent was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 110 and subject to the provisions of Section 1108) and the several parties thereto shall be one corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

SEC. 2. Section 1107.5 of the Corporations Code is amended to read:

1107.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 3. Section 1108 of the Corporations Code is amended to read:

1108. (a) The merger of any number of domestic corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a domestic corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter governing the merger of domestic corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and of Section 407 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) (with respect to any domestic constituent corporations), the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a domestic corporation, the agreement and the officers' certificate of each domestic or foreign constituent corporation shall be filed as provided in Section 1103, or the certificate of ownership shall be filed as provided in Section 1110, and thereupon, subject to subdivision (c) of Section 110, the merger shall be effective as to each domestic constituent corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but, except as provided in subdivision (e), the merger shall be effective as to any domestic disappearing corporation as of

the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 1103.

(4) A certificate of ownership pursuant to Section 1110.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing pursuant to subdivision (d), automatically surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) The provisions of the last two sentences of Section 1101 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) apply to the rights of the shareholders of any of the constituent corporations that are domestic corporations and of any domestic corporation that is a parent party of any foreign constituent corporation.

SEC. 4. Section 1110 of the Corporations Code is amended to read:

1110. (a) If a domestic corporation owns all the outstanding shares, or owns less than all the outstanding shares but at least 90 percent of the outstanding shares of each class, of a corporation or corporations, domestic or foreign, the merger of the subsidiary corporation or corporations into the parent corporation or the merger into the subsidiary corporation of the parent corporation and any other subsidiary corporation or corporations, may be effected by a resolution or plan of merger adopted and approved by the board of the parent corporation and the filing of a certificate of ownership as provided in subdivision (e). The resolution or plan of merger shall provide for the merger and shall provide that the surviving corporation assumes all the liabilities of each disappearing corporation and shall include any other provisions required by this section.

(b) If the parent corporation owns less than all the outstanding shares but at least 90 percent of the outstanding shares of each class of the

subsidiary corporation that is a party to the merger, the resolution or plan of merger also shall set forth the securities, cash, property, or rights to be issued, paid, delivered, or granted upon surrender of each outstanding share of the subsidiary corporation not owned by the parent corporation and the entire resolution or plan of merger as well as the consideration to be received for each share of the subsidiary corporation not owned by the parent corporation, shall be approved by the board of that subsidiary corporation.

(c) If the parent corporation is to be merged into one of its subsidiary corporations, the resolution or plan of merger also shall provide for the pro rata conversion of the outstanding shares of the parent corporation into shares of the surviving subsidiary corporation. In this case, the entire resolution or plan of merger shall be approved by the board of the surviving subsidiary corporation and, if the merger, but for the operation of this section, would be a merger reorganization (Section 181) the principal terms of which would be required to be approved by the outstanding shares (Section 152) of any class of the parent corporation pursuant to subdivision (d) of Section 1201, the principal terms of the resolution or plan of merger shall be approved by the outstanding shares (Section 152) of that same class of the parent corporation.

(d) In any merger pursuant to this section, the resolution or plan of merger may provide for the amendment of the articles of the surviving corporation to change its name, subject to Section 201, regardless of whether the name so adopted is the same as or similar to that of one of the disappearing corporations. The provision shall establish the wording of the amendment pursuant to paragraph (2) of subdivision (a) of Section 907 and the resolution or plan of merger shall not provide for the amendment of the articles of the surviving corporation other than to change its name.

(e) After the required approval or approvals of the resolution or plan of merger, a certificate of ownership consisting of an officers' certificate of the parent corporation shall be filed, and a copy thereof for each domestic subsidiary corporation and qualified foreign disappearing subsidiary corporation which is a party to the merger shall also be filed. The certificate of ownership shall:

- (1) Identify the parent and subsidiary corporation or corporations.
- (2) Set forth the share ownership by the parent corporation of each subsidiary corporation as 100 percent of the outstanding shares or as at least 90 percent of the outstanding shares of each class, as the case may be.
- (3) Set forth the resolution or plan of merger.
- (4) Set forth approval of the resolution or plan of merger by the board of the parent corporation.
- (5) Set forth other approvals of the resolution or plan of merger as required under subdivision (b) or (c), if applicable.

(f) Upon the filing of the certificate of ownership, the merger shall be effective and any amendment of the articles of the surviving corporation set forth in the certificate shall be effective.

(g) A merger pursuant to this section may be effected if the parent corporation is a foreign corporation and if at least one subsidiary corporation is a domestic corporation but in such a case the certificate of ownership prepared as in subdivision (e) or the document required by subdivision (d) of Section 1108 shall be filed as to each domestic and qualified foreign subsidiary corporation, but no filing shall be made as to the foreign parent corporation. No merger into or with a foreign corporation may be effected as provided by this section unless the laws of the state or place of its incorporation permit that action.

(h) In the event all of the outstanding shares of a subsidiary domestic corporation party to a merger effected under this section are not owned by the parent corporation immediately prior to the merger, the parent corporation shall, at least 20 days before the effective date of the merger, give notice to each shareholder of such subsidiary corporation that the merger will become effective on or after a specified date. The notice shall contain a copy of the resolution or plan of merger and the information required by subdivision (a) of Section 1301. The notice shall be sent by mail addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. The shareholder shall have the right to demand payment of cash for the shares of the shareholder pursuant to Chapter 13 (commencing with Section 1300).

(i) If an agreement of merger is entered into between a parent corporation and one or more of its subsidiary corporations and the share ownership requirements of subdivision (a) are met, the agreement of merger may be filed as a plan of merger with a certificate of ownership in accordance with the requirements of this section, in which case Sections 1101, 1102, 1103, 1200, 1201, and 1202 shall not apply; or the agreement of merger may be filed pursuant to Section 1103, in which case this section shall not apply.

SEC. 5. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if

required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

- (1) The terms and conditions of the merger.
  - (2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.
  - (3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.
  - (4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (i) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests or other securities of the surviving party, or (ii) that the shares are canceled without consideration.
  - (5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or, if a domestic limited partnership is a party to the merger, Section 15678.2, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.
  - (6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.
- (c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent corporation may be converted only into nonredeemable common shares of a surviving corporation or a parent party (Section 1200) or nonredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more

than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for



each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by

the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger and the performance of the conditions necessary to the adoption of any

amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6

(commencing with Section 15679.1) of Chapter 3 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancels the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

SEC. 5.5. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations

(Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (i) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests or other securities of the surviving party, or (ii) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or, if a domestic limited partnership is a party to the merger, Section 15678.2 or 15911.12, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and

foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section



15678.4 or subdivision (a) of Section 15911.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary

or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or subdivision (a) of Section 15911.14.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 or in subdivision (a) of Section 15901.14 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 or

paragraph (3) of subdivision (a) of Section 15909.02 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6 (commencing with Section 15679.1) of Chapter 3, and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancels the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

SEC. 6. Section 1155 of the Corporations Code is amended to read:

1155. (a) To convert a corporation:

(1) If the corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting corporation shall be executed and acknowledged by those officers of the converting corporation as would be required to sign an officers' certificate (Section 173), and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 1152, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(c) For the purposes of this chapter, the certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in

subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting corporation and no converting corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) The Secretary of State shall notify the Franchise Tax Board and shall notify the Franchise Tax Board of the conversion. Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

SEC. 7. Section 1808 of the Corporations Code is amended to read:

1808. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 1805 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depositary with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and shareholders.

(4) That the corporation is dissolved.

The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(b) Upon the making of the order declaring the corporation dissolved, corporate existence shall cease except for the purposes of further winding up if needed; and the directors or such other persons shall be discharged

from their duties and liabilities, except in respect to completion of the winding up.

SEC. 8. Section 1809 of the Corporations Code is amended to read:

1809. Whenever a corporation is dissolved or its existence forfeited by order, decree or judgment of a court, a copy of the order, decree or judgment, certified by the clerk of court, shall forthwith be filed in the office of the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 9. Section 1900.5 of the Corporations Code is amended to read:

1900.5. (a) Notwithstanding any other provision of this division, when a corporation has not issued shares, a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators may sign and verify a certificate of dissolution stating the following:

(1) That the certificate of dissolution is being filed within 12 months from the date the articles of incorporation were filed.

(2) That the corporation does not have any debts or other liabilities, except as provided in paragraph (3).

(3) That the tax liability will be satisfied on a taxes paid basis or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the corporation has not conducted any business from the time of the filing of the articles of incorporation.

(6) That the known assets of the corporation remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the corporation acquired no known assets, as the case may be.

(7) That a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators authorized the dissolution and elected to dissolve the corporation.

(8) That the corporation has not issued any shares, and if the corporation has received payments for shares from investors, those payments have been returned to those investors.

(9) That the corporation is dissolved.

(b) A certificate of dissolution signed and verified pursuant to subdivision (a) shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

(c) Upon filing a certificate of dissolution pursuant to subdivision (b), a corporation shall be dissolved and its powers, rights, and privileges shall cease.

SEC. 10. Section 1905 of the Corporations Code is amended to read:

1905. (a) When a corporation has been completely wound up without court proceedings therefor, a majority of the directors then in office shall sign and verify a certificate of dissolution stating:

(1) That the corporation has been completely wound up.

(2) That its known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or any other information that may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(4) That the corporation is dissolved.

(5) If no certificate of election is to be filed pursuant to subdivision (c) of Section 1901, that the election to dissolve was made by the vote of all the outstanding shares.

(6) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The certificate of dissolution shall be filed with the Secretary of State and thereupon the corporate powers, rights, and privileges of the corporation shall cease. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 11. Section 1905.1 is added to the Corporations Code, to read:

1905.1. If a corporation has filed a certificate of dissolution with the Secretary of State on or after January 1, 1992, and before the effective date of the act adding this section, pursuant to Section 1905, prior to its amendment by the act adding this section, and the Franchise Tax Board has not, as of that effective date, made the determination required by subdivision (c) of Section 1905, prior to its amendment by the act adding this section, then the corporation shall be dissolved as of the date of filing the certificate of dissolution and thereupon its corporate existence shall cease.

SEC. 12. Section 2010 of the Corporations Code is amended to read:

2010. (a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof.



(b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.

SEC. 13. Section 2011 of the Corporations Code is amended to read:

2011. (a) (1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

(A) Against the dissolved corporation, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims.

(B) If any of the assets of the dissolved corporation have been distributed to shareholders, against shareholders of the dissolved corporation to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

A shareholder's total liability under this section may not exceed the total amount of assets of the dissolved corporation distributed to the shareholder upon dissolution of the corporation.

(2) Except as set forth in subdivision (c), all causes of action against a shareholder of a dissolved corporation arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that shareholder of a dissolved corporation prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the corporation.

(3) As a matter of procedure only, and not for purposes of determining liability, shareholders of the dissolved corporation may be sued in the corporate name of the corporation upon any cause of action against the corporation. This section does not affect the rights of the corporation or its creditors under Section 2009, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, which may arise against the shareholders of a corporation.

(4) This subdivision applies to corporations dissolved on and after January 1, 1992. Corporations dissolved prior to that date are subject to the law in effect prior to that date.

(b) Summons or other process against such a corporation may be served by delivering a copy thereof to an officer, director or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of such persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons

or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(c) Every such corporation shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any such action shall bind each and all of its shareholders or other persons having any equity or other interest in such corporation, to the extent of their interest therein, and such action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any such action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) Upon receipt of such process and the fee therefor, the Secretary of State forthwith shall give notice to the corporation as provided in Section 1702.

(e) For purposes of Article 4 (commencing with Section 19071) of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the liability described in this section shall be considered a liability at law with respect to a dissolved corporation.

SEC. 14. Section 2112 of the Corporations Code is amended to read:

2112. (a) Subject to Section 2113, a foreign corporation which has qualified to transact intrastate business may surrender its right to engage in that business within this state by filing a certificate of surrender signed by a corporate officer stating:

(1) The name of the corporation as shown on the records of the Secretary of State, and the state or place of incorporation or organization.

(2) That it revokes its designation of agent for service of process.

(3) That it surrenders its authority to transact intrastate business.

(4) That it consents that process against it in any action upon any liability or obligation incurred within this state prior to the filing of the certificate of withdrawal may be served upon the Secretary of State.

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that is served upon the Secretary of State, which address or the name to which the process should be sent may be changed from time to time by filing a statement signed by a corporate officer stating the new address or name or both.

(6) Except in the case of a foreign association, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The Secretary of State shall notify the Franchise Tax Board of the surrender.

SEC. 15. Section 6014 of the Corporations Code is amended to read:

6014. After approval of a merger by the board and any approval by the members (Section 5034) or other person or persons required by Section 6012, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of memberships of each class entitled to vote on the merger, identifying any other person or persons whose approval is required, and stating that the principal terms of the agreement in the form attached were duly approved by the required vote of the members and (if applicable) such other person or persons. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 5008 and subject to the provisions of Section 6018) and the several parties thereto shall be one surviving corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

SEC. 16. Section 6018 of the Corporations Code is amended to read:

6018. (a) Subject to the provisions of Section 6010, the merger of any number of corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a public benefit corporation or a religious corporation, the merger proceedings with respect to that corporation and any disappearing corporation shall conform to the provisions of this chapter governing the merger of corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 6012, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a public benefit corporation or a religious corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 6014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for

the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 6014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

SEC. 17. Section 6019.1 of the Corporations Code is amended to read:

6019.1. (a) Subject to the provisions of Sections 6010 and 9640, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations and foreign corporations (Section 5053) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of Section 9122, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities, or other property may be in addition to, or in lieu of, shares, memberships, interests, or other securities of the surviving corporation or surviving other business entity.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or 15911.12, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(d) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(e) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(f) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class, if any, entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form

attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class entitled to vote, if any, which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (h). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or

exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 17.5. Section 6019.1 of the Corporations Code is amended to read:

6019.1. (a) Subject to the provisions of Sections 6010 and 9640, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations and foreign corporations (Section 5053) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.



(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of Section 9122, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities, or other property may be in addition to, or in lieu of, shares, memberships, interests, or other securities of the surviving corporation or surviving other business entity.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(d) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(e) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(f) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class, if any, entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of

each class entitled to vote, if any, which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (h). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required

to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign

jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 18. Section 6020.5 of the Corporations Code is amended to read:

6020.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 19. Section 6518 of the Corporations Code is amended to read:

6518. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 6515 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the

order shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and members.

(4) That the corporation is dissolved.

(b) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(c) Upon the making of the order declaring the corporation dissolved, corporate existence shall cease except for the purposes of further winding up if needed; and the directors or such other persons shall be discharged from their duties and liabilities, except in respect to completion of the winding up.

SEC. 20. Section 6519 of the Corporations Code is amended to read:

6519. Whenever a corporation is dissolved or its existence forfeited by order, decree or judgment of a court, a copy of the order, decree or judgment, certified by the clerk of court, shall forthwith be filed. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 21. Section 6615 of the Corporations Code is amended to read:

6615. (a) When a corporation has been completely wound up without court proceedings, a majority of the directors then in office shall sign and verify a certificate of dissolution stating:

(1) That the corporation has been completely wound up.

(2) That its known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That the corporation is dissolved.

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) One of the following documents issued by the Attorney General shall be attached to the certificate of dissolution:

(1) A written waiver of objections to the distribution of the corporation's assets pursuant to subdivision (c) of Section 6716.

(2) A written confirmation that the corporation has no assets.

(c) The certificate of dissolution and attachment described in subdivision (b) shall be filed with the Secretary of State who shall not accept a certificate of dissolution for filing without this attachment. The corporate existence shall cease upon the acceptance of the filing of the certificate of dissolution and attachment by the Secretary of State, except for the purpose of further winding up if needed. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 22. Section 8014 of the Corporations Code is amended to read:

8014. After approval of a merger by the board and any approval by the members (Section 5034) required by Section 8012, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of memberships of each class entitled to vote on the merger, identifying any other person or persons whose approval is required, and that the principal terms of the agreement in the form attached were duly approved by the required vote of the members and, if applicable, any other person or persons. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 5008 and subject to the provisions of Section 8018) and the several parties thereto shall be one corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

SEC. 23. Section 8018 of the Corporations Code is amended to read:

8018. (a) Subject to the provisions of Section 8010, the merger of any number of corporations with any number of foreign corporations, foreign business corporations or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a mutual benefit corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 8012 the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a mutual benefit corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 8014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, or foreign business corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 8014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

SEC. 24. Section 8019.1 of the Corporations Code is amended to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Sections 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person

or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

- (1) The terms and conditions of the merger.
- (2) The name and place of incorporation or organization of each party and the identity of the surviving party.
- (3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.
- (4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.
- (5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.
- (6) Any other details or provisions as are desired.
- (c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.
- (d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the



agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability

company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and

domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17522, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 24.5. Section 8019.1 of the Corporations Code is amended to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Sections 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class

consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by

all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17522, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 25. Section 8020.5 of the Corporations Code is amended to read:

8020.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with

Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 26. Section 8518 of the Corporations Code is amended to read:

8518. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 8515 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and members.

(4) That the corporation is dissolved.

(b) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(c) Upon the making of the order declaring the corporation dissolved, corporate existence shall cease except for the purposes of further winding up if needed; and the directors or such other persons shall be discharged from their duties and liabilities, except in respect to completion of the winding up.

SEC. 27. Section 8519 of the Corporations Code is amended to read:



8519. Whenever a corporation is dissolved or its existence forfeited by order, decree or judgment of a court, a copy of the order, decree or judgment, certified by the clerk of court, shall forthwith be filed. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 28. Section 8615 of the Corporations Code is amended to read:

8615. (a) When a corporation has been completely wound up without court proceedings therefor, a majority of the directors then in office shall sign and verify a certificate of dissolution stating:

(1) That the corporation has been completely wound up.

(2) That its known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(4) That the corporation is dissolved.

(5) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The certificate of dissolution shall be filed and thereupon the corporate existence shall cease, except for the purpose of further winding up if needed. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 29. Section 12535 of the Corporations Code is amended to read:

12535. After approval of a merger by the board and any approval by the members under Section 12533, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of memberships of each class entitled to vote on the merger, and that the principal terms of the agreement in the form attached were duly approved by the required vote of the members. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 12214 and subject to the provisions of Section 12539) and the several parties thereto shall be one corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

SEC. 30. Section 12539 of the Corporations Code is amended to read:

12539. (a) Subject to the provisions of Section 12530, the merger of any number of corporations with any number of foreign corporations,

foreign business corporations, or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a cooperative corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 12533, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a cooperative corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 12535 and thereupon, subject to subdivision (c) of Section 12214, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of the filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

SEC. 31. Section 12540.1 of the Corporations Code is amended to read:

12540.1. (a) Any one or more corporations may merge with one or more other business entities (Section 12242.5). Subject to the provisions of Section 12530, one or more other domestic corporations or foreign corporations (Section 12237) may be parties to the merger.

Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or,

if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 12224), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 12242.6) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). If a domestic reciprocal insurer organized after 1974 to

provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent general partnership or foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 12214 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has

the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

SEC. 31.5. Section 12540.1 of the Corporations Code is amended to read:

12540.1. (a) Any one or more corporations may merge with one or more other business entities (Section 12242.5). Subject to the provisions of Section 12530, one or more other domestic corporations or foreign corporations (Section 12237) may be parties to the merger.

Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 12224), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 12242.6) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if



applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent general partnership or foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 12214 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously

registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

SEC. 32. Section 12550.5 of the Corporations Code is amended to read:

12550.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 33. Section 12628 of the Corporations Code is amended to read:

12628. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 12625 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person, or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and members.

(4) That the corporation is dissolved.

(b) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(c) Upon the making of the order declaring the corporation dissolved, corporate existence shall cease except for the purposes of further winding up if needed; and the directors or such other persons shall be discharged from their duties and liabilities, except in respect to completion of the winding up.

SEC. 34. Section 12629 of the Corporations Code is amended to read:

12629. Whenever a corporation is dissolved or its existence forfeited by order, decree, or judgment of a court, a copy of the order, decree or judgment, certified by the clerk of court, shall forthwith be filed. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 35. Section 12635 of the Corporations Code is amended to read:

12635. (a) When a corporation has been completely wound up without court proceedings therefor, a majority of the directors then in office shall sign and verify a certificate of dissolution stating:

(1) That the corporation has been completely wound up.

(2) That its known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(4) That the corporation is dissolved.

(5) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The certificate of dissolution shall be filed and thereupon the corporate existence shall cease, except for the purpose of further winding up if needed. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

SEC. 36. Section 15678.4 of the Corporations Code is amended to read:

15678.4. (a) If the surviving entity is a limited partnership or an other business entity (other than a corporation in a merger in which a domestic

corporation is a constituent party), after approval of a merger by the constituent limited partnerships and any constituent other business entities, the constituent limited partnerships and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership) and by each foreign constituent limited partnership by one or more general partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent limited partnerships and constituent other business entities, separately identifying the disappearing limited partnerships and disappearing other business entities and the surviving limited partnership or surviving other business entity.

(2) If a vote of the limited partners was required under Section 15678.2, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) If the surviving entity is a limited partnership and not an other business entity, any change required to the information set forth in the certificate of limited partnership of the surviving limited partnership resulting from the merger, including any change in the name of the surviving limited partnership resulting from the merger. The filing of a certificate of merger setting forth any such changes to the certificate of limited partnership of the surviving limited partnership shall have the effect of the filing of a certificate of amendment by the surviving limited partnership, and the surviving limited partnership need not file a certificate of amendment under Section 15622 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign limited partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, paragraph (2) of subdivision (g) of Section 1113.

If the surviving entity is a foreign limited partnership in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments as required under paragraph (1) of subdivision (g) of Section 1113 shall be filed at the same time as the filing of the certificate of merger.

(b) If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, after approval of the merger by the constituent limited partnerships and constituent other business entities, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership.

(c) A certificate of merger or the agreement of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a certificate of cancellation for each disappearing limited partnership, and no disappearing limited partnership need file a certificate of dissolution or a certificate of cancellation under Section 15623 as a result of the merger.

(d) If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in this state, by the filing of the certificate of merger or agreement of merger, as is applicable, the foreign corporation shall automatically surrender its right to transact intrastate business.

SEC. 37. Section 15678.10 of the Corporations Code is amended to read:

15678.10. (a) Upon merger pursuant to this article, a surviving domestic or foreign limited partnership or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign limited partnership or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) The Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 38. Section 16915.5 of the Corporations Code is amended to read:

16915.5. (a) Upon merger pursuant to this article, a surviving domestic or foreign partnership or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign partnership or other business entity that is taxed under Part 10

(commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 39. Section 16954 of the Corporations Code is amended to read:

16954. (a) The registration of a registered limited liability partnership may be amended by an amended registration executed by one or more partners authorized to execute an amended registration and filed with the Secretary of State, as soon as reasonably practical after any information set forth in the registration or previously filed amended registration becomes inaccurate or to add information to the registration or amended registration.

(b) If a registered limited liability partnership ceases to be a registered limited liability partnership, it shall file with the Secretary of State a notice, executed by one or more partners authorized to execute the notice, that it is no longer a registered limited liability partnership. The notice shall state that a final annual tax return, as described by Section 17948.3 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(c) An amendment pursuant to subdivision (a) and a notice pursuant to subdivision (b) shall each be accompanied by a fee as set forth in subdivision (c) of Section 12189 of the Government Code.

(d) The Secretary of State shall provide forms for an amended registration under subdivision (a) and a notice under subdivision (b).

(e) A notice of cessation, signed pursuant to subdivision (b), shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the cessation.

SEC. 40. Section 16960 of the Corporations Code is amended to read:

16960. (a) The registration of a foreign limited partnership may be amended by an amended registration executed by one or more partners authorized to execute an amended registration and filed with the Secretary of State, as soon as reasonably practical after any information set forth in the registration or previously filed amended registration becomes inaccurate, to add information to the registration or amended registration or to withdraw its registration as a foreign limited liability partnership.

(b) If a foreign limited partnership ceases to be a limited liability partnership, it shall file with the Secretary of State a notice, executed by one or more partners authorized to execute the notice, that it is no longer a foreign limited liability partnership. The notice shall state that a final annual tax return, as described by Section 17948.3 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of the Revenue and Taxation Code.

(c) A foreign limited liability partnership that is, but is no longer required to be, registered under Section 16959 may withdraw its registration by filing a notice with the Secretary of State, executed by one or more partners authorized to execute the notice.

(d) The Secretary of State shall provide forms for an amended registration under subdivision (a) and notices under subdivisions (b) and (c).

(e) The filing of amended registration forms pursuant to subdivision (a) and a notice pursuant to subdivision (b) or (c) shall each be accompanied by a fee as set forth in subdivision (d) of Section 12189 of the Government Code.

(f) A notice of cessation, signed pursuant to subdivision (b), shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the cessation.

SEC. 41. Section 17350.5 of the Corporations Code is amended to read:

17350.5. (a) Notwithstanding any other provision of this division, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the articles of organization, may execute and acknowledge a certificate of cancellation of articles of organization, on a form prescribed by the Secretary of State, stating all of the following:

(1) The name of the domestic limited liability company and the Secretary of State's file number.

(2) That the certificate of cancellation is being filed within 12 months from the date the articles of organization were filed.

(3) That the limited liability company does not have any debts or other liabilities, except as provided in paragraph (4).

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the known assets of the limited liability company remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the limited liability company acquired no known assets, as the case may be.



(6) That the limited liability company has not conducted any business from the time of the filing of the articles of organization.

(7) That a majority of the managers or members voted, or, if no managers or members, the person or a majority of the persons signing the articles of organization, voted to dissolve the limited liability company.

(8) If the limited liability company has received payments for interests from investors, that those payments have been returned to those investors.

(b) A certificate of cancellation executed and acknowledged pursuant to subdivision (a) shall be filed with the Secretary of State within 12 months from the date that the articles of organization were filed. The Secretary of State shall notify the Franchise Tax Board of the cancellation.

(c) Upon filing a certificate of cancellation pursuant to subdivision (a), a limited liability company shall be cancelled and its powers, rights, and privileges shall cease.

(d) A domestic limited liability company that filed articles of organization on or after January 1, 2004, and that meets all of the conditions described in subdivision (a) may file a certificate of cancellation under this section.

SEC. 42. Section 17355 of the Corporations Code is amended to read:

17355. (a) (1) Causes of action against a dissolved limited liability company, whether arising before or after the dissolution of the limited liability company, may be enforced against any of the following:

(A) Against the dissolved limited liability company, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the limited liability company that may be available to satisfy claims.

(B) If any of the assets of the dissolved limited liability company have been distributed to members, against members of the dissolved limited liability company to the extent of the limited liability company assets distributed to them upon dissolution of the limited liability company.

Any member compelled to return distributed assets in an amount that exceeds the sum of the member's pro rata share of the claim and the amount for which the member could otherwise be held liable under Section 17254 or 17255 may seek contribution for the excess from any other member or manager, up to the sum of that other person's pro rata share of the claim and that other person's liabilities under Section 17254 or 17255.

(2) Except as set forth in subdivision (c), all causes of action against a member of a dissolved limited liability company arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that member of a dissolved limited liability company prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the limited liability company.

(3) As a matter of procedure only, and not for purposes of determining liability, members of the dissolved limited liability company may be sued in the name of the limited liability company upon any cause of action against the limited liability company. This section does not affect the rights of the limited liability company or its creditors under Sections 17254 and 17255, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, that may arise against the member of a limited liability company.

(b) Summons or other process against a limited liability company may be served by delivering a copy thereof to a manager, member, officer, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved limited liability company by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State. Upon receipt of process and the fee therefor, the Secretary of State shall give notice to the limited liability company as provided in Section 1702.

(c) Every limited liability company shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any such action shall bind each and all of its members or other persons having any equity or other interest in the limited liability company, to the extent of their interest therein, and the action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) For purposes of Article 4 (commencing with Section 19071) of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the liability described in this section shall be considered a liability at law within respect to a dissolved limited liability company.

SEC. 43. Section 17356 of the Corporations Code is amended to read:

17356. (a) (1) The managers shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (c) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the managers or members filing the certificate of dissolution determine to include.

(3) If a dissolution pursuant to subdivision (b) of Section 17350 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b) (1) The managers or members who filed the certificate of dissolution shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (c) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(C) Any other information the managers or members filing the certificate of cancellation of articles of organization determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing.

SEC. 44. Section 17552 of the Corporations Code is amended to read:

17552. (a) If the surviving entity is a limited liability company or an other business entity (other than a corporation in a merger in which a domestic corporation is a constituent party), after approval of a merger by the constituent limited liability companies and any constituent other business entities, the constituent limited liability companies or constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company, unless a lesser number is specified in the articles of organization or the operating agreement of the constituent limited liability company, and by each constituent foreign limited liability company and each constituent other business entity by those persons required to execute the certificate or agreement of merger by the laws under which the constituent foreign

limited liability company or other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent limited liability companies and constituent other business entities, separately identifying the disappearing limited liability companies and disappearing other business entities and the surviving limited liability company or surviving other business entity.

(2) If a vote of the members was required under Section 17551, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) If the surviving entity is a limited liability company and not an other business entity, any change required to the information set forth in the articles of organization of the surviving limited liability company resulting from the merger, including any change in the name of the surviving limited liability company resulting from the merger. The filing of a certificate of merger setting forth any changes to the articles of organization of the surviving limited liability company shall have the effect of the filing of an amendment to the articles of organization by the surviving limited liability company, and the surviving limited liability company need not file a certificate of amendment under Section 17054 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign limited liability company, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, paragraph (2) of subdivision (g) of Section 1113.

If the surviving entity is a foreign limited liability company in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments as required under paragraph (1) of subdivision (g) of Section 1113 shall be filed at the same time as the filing of the certificate of merger.

(b) If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, after approval of the merger by the constituent limited liability companies and constituent other business entities, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of

subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company unless a lesser number is specified in the articles of organization or the operating agreement of the domestic constituent limited liability company.

(c) A certificate of merger, or the agreement of merger, as is applicable under subdivisions (a) or (b), shall have the effect of the filing of a certificate of cancellation of articles of organization for each disappearing limited liability company and no disappearing limited liability company need file a certificate of cancellation of articles of organization under Section 17356 as a result of the merger.

(d) If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in this state, the filing of the certificate of merger or the agreement of merger shall automatically surrender its right to transact intrastate business.

SEC. 45. Section 17554.5 of the Corporations Code is amended to read:

17554.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign limited liability company or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign limited liability company or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 46. Section 3126 of the Financial Code is amended to read:

3126. (a) When the commissioner has completed the liquidation of the bank, he or she shall petition the court for an order declaring the bank duly wound up and dissolved.

(b) After such notice as the court may direct and a hearing, the court may make an order declaring the bank duly wound up and dissolved. Such order shall declare:

(1) That the bank has been duly wound up;

(2) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, and that any tax or penalty

due under the Corporation Tax Law has been paid, and that the bank's known debts and liabilities have been paid or adequately provided for, or that such taxes, penalties, debts, and liabilities have been paid so far as the bank's assets permitted, as the case may be. If there are known debts or liabilities for the payment of which adequate provision has been made, the order shall describe such provision, setting forth such information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability;

(3) That all known assets of the bank have been distributed to its shareholders or wholly applied on account of the bank's debts and liabilities; and

(4) That the bank is dissolved.

(c) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(d) Upon the making of the order declaring the bank dissolved, the corporate existence of the bank shall cease, except for the purposes of any necessary further winding up.

(e) Upon the making of the order declaring the bank dissolved, the commissioner shall forthwith file with the Secretary of State a copy of such order, certified by the clerk of the court.

SEC. 47. Section 5758 of the Financial Code is amended to read:

5758. The executed agreement, or an executed counterpart of it and the respective certificate of each constituent association or any other corporation and of the surviving association shall be filed with the Secretary of State. Neither the agreement nor any certificate shall be filed, however, unless the commissioner's written approval is attached. The effective date of the merger or consolidation under this article shall be the date of the filing with the Secretary of State of the copy of the approved agreement of merger or consolidation. A copy of the approved agreement certified by the Secretary of State shall be filed with the commissioner.

If the resulting association is a federal association, the effective date of merger shall be the date the merger is effective under regulations of the Office of Thrift Supervision.

SEC. 48. Section 5760 of the Financial Code is amended to read:

5760. (a) Any association, owning all the outstanding stock of any corporation, may merge its wholly owned subsidiary corporation if the laws under which the subsidiary corporation exists permit a merger as this section provides. The association shall submit to the commissioner for approval a certificate of ownership in its name signed by its president or a vice president, and its secretary or an assistant secretary, which shall be verified by their affidavit, stating, in effect, that the matters set forth in the certificate are true of their own knowledge. The certificate shall set forth:

(1) That it owns all the outstanding stock of the merged corporation.

(2) A copy of the resolution adopted by its board of directors to merge the corporation, and to assume all of its obligations.

(3) The time and place of the meeting of the board of directors at which the resolution was adopted, and the vote by which it was adopted.

(b) If an association owns less than all the outstanding stock but at least 90 percent of the outstanding shares of stock of each class of a corporation or corporations, domestic or foreign, the merger of the subsidiary corporation or corporations into the parent association may be effected by resolutions adopted by the boards of the parent and each subsidiary corporation, and the filing of a certificate of ownership as provided in subdivision (d). The resolution of the board of the parent association shall provide for the merger, shall provide that the parent association assumes all the liabilities of each subsidiary corporation and shall set forth the securities, cash property or rights to be issued, paid, delivered or granted by the parent association upon surrender of each share of stock of each subsidiary corporation not owned by the parent association. The resolution of the board of each subsidiary corporation shall approve the fairness of the consideration to be received for each share of stock of the subsidiary corporation not owned by the parent association.

(c) Notwithstanding any other provision of law, in any merger pursuant to this section, the parent association may change its name regardless of whether the name so adopted is the same or similar to that of one of the disappearing associations. In this case the resolution shall provide for the amendment of articles to change the name.

(d) After adoption of the resolution or resolutions of merger, as provided under subdivision (b), the association shall submit to the commissioner for approval a certificate of ownership in its name signed by its president or a vice president, and its secretary or an assistant secretary, which shall be verified by their affidavit, stating, in effect, that the matters set forth in the certificate are true of their own knowledge. The certificate shall set forth:

(1) That the association owns at least 90 percent of the outstanding stock of the merged corporations.

(2) A copy of the resolution adopted by the association's board of directors to merge the corporation, to assume all of its obligations, and including the resolution for a change of name if applicable.

(3) A copy of the resolution or resolutions adopted by the board of each subsidiary corporation, if required.

(4) The time and place of the meeting of the boards of directors of the parent and the subsidiary at which the resolutions were adopted, and the vote by which they were adopted.

(e) In the event all of the outstanding shares of stock of a subsidiary domestic corporation party to a merger effected under this section are not owned by the parent association immediately prior to the merger, the parent association shall, at least 20 days before the effective date of the merger, give notice to each stockholder of the subsidiary corporation that the merger will become effective on or after a specific date, which notice shall contain (1) a copy of the resolutions of the boards of directors of the parent and the subsidiary required by subdivision (b) above and (2) the information which must accompany the notice required by subdivision (a) of Section 1301 of the Corporations Code. The notice shall be sent by mail

addressed to the stockholder at the address of the stockholder as it appears on the records of the corporation. The stockholder shall have the right to demand payment of cash for the shares of stock of the stockholder pursuant to the provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code.

(f) If a merger authorized by this section is approved, the commissioner shall attach to the certificate written approval, and the certificate shall be filed with the Secretary of State. A copy of the approved certificate certified by the Secretary of State shall be filed with the commissioner. Thereupon, all of the estate, property, rights, privileges, and franchises of the merged corporation shall vest in and be held and enjoyed by the parent association as fully as the same were before held and enjoyed by the merged corporation, but subject to all the liabilities and obligations of the merged corporation and the rights of all creditors. The parent association shall not, however, thereby acquire the right to engage in any business or to exercise any right, privilege, or franchise of a kind which it could not lawfully engage in or exercise under the provisions of this division. The parent association shall be deemed to have assumed all the liabilities and obligations of the merged corporation, and shall be liable in the same manner as if it had itself incurred the liabilities and obligations.

(g) If the merged subsidiary is a domestic corporation, a copy of the certificate shall be filed in the office of the Secretary of State on behalf of the subsidiary corporation. If the merged subsidiary is a foreign corporation qualified for the transaction of intrastate business in this state there shall be filed in the office of the Secretary of State on behalf of the foreign subsidiary a certificate of surrender and right to transact intrastate business as provided in Section 2112 of the Corporations Code.

SEC. 49. Section 17937 is added to the Revenue and Taxation Code, to read:

17937. (a) A limited partnership shall not be subject to the taxes imposed by this chapter for a taxable year if the limited partnership does all of the following:

(1) Files with the Franchise Tax Board a timely final annual tax return for the preceding taxable year.

(2) Does not do business in this state after the end of the taxable year for which the final annual tax return was filed.

(3) Files a certificate of cancellation with the Secretary of State, pursuant to Section 15623 or 15696 of the Corporations Code, before the end of the 12-month period beginning with the date the final annual tax return was filed.

(b) For purposes of this section, a “final annual tax return” is a return described in Section 18633 that is filed on or before the due date of the return, as extended, that the taxpayer designates in the manner prescribed by the Franchise Tax Board as the taxpayer’s final annual return for purposes of the tax imposed under this chapter. For purposes of this chapter, a “final annual tax return” is a return filed pursuant to Section



18633 where the taxpayer is not required to file a subsequent return to reflect the imposition of tax under this chapter.

SEC. 50. Section 17945 of the Revenue and Taxation Code is repealed.

SEC. 51. Section 17947 is added to the Revenue and Taxation Code, to read:

17947. (a) A limited liability company shall not be subject to the taxes imposed by this chapter for a taxable year if the limited liability company does all of the following:

(1) Files with the Franchise Tax Board a timely final annual tax return for the preceding taxable year.

(2) Does not do business in this state after the end of the taxable year for which the final annual tax return was filed.

(3) Files a certificate of cancellation with the Secretary of State, pursuant to Section 17356 or 17455 of the Corporations Code, before the end of the 12-month period beginning with the date the final annual tax return was filed.

(b) For purposes of this section, a “final annual tax return” is a return described in Section 18633.5 that is filed on or before the due date of the return, as extended, that the taxpayer designates in the manner prescribed by the Franchise Tax Board as the taxpayer’s final return for purposes of the tax imposed under this chapter. For purposes of this chapter, a “final annual tax return” is a return filed pursuant to Section 18633.5 where the taxpayer is not required to file a subsequent return to reflect the imposition of tax under this chapter.

SEC. 52. Section 17948.1 of the Revenue and Taxation Code is repealed.

SEC. 53. Section 17948.3 is added to the Revenue and Taxation Code, to read:

17948.3. (a) A registered limited liability partnership shall not be subject to the taxes imposed by this chapter for a taxable year if the registered limited liability partnership does all of the following:

(1) Files with the Franchise Tax Board a timely final annual tax return for the preceding taxable year.

(2) Does not do business within this state after the end of the taxable year for which the final annual tax return was filed.

(3) Files a notice in accordance with subdivision (b) of Section 16954 or subdivision (b) of Section 16960 of the Corporations Code with the Secretary of State before the end of the 12-month period beginning with the date of the final annual tax return was filed.

(b) For purposes of this section, a “final annual tax return” is a return described in Section 18633 that is filed on or before the due date of the return, as extended, that the taxpayer designates in the manner prescribed by the Franchise Tax Board as the taxpayer’s final annual tax return for purposes of the tax imposed under this chapter. For purposes of this chapter, a “final annual tax return” is a return filed pursuant to Section 18633 where the taxpayer is not required to file a subsequent return to reflect the imposition of tax under this chapter.

SEC. 54. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive taxable years, commencing with the first taxable year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), for taxable years beginning on or after January 1, 1999, and before January 1, 2000, every “qualified new corporation” shall pay annually to the state a minimum franchise tax of

five hundred dollars (\$500) for the second taxable year. This subdivision shall apply to any corporation that is a qualified new corporation and is incorporated on or after January 1, 1999, and before January 1, 2000.

(1) The determination of the gross receipts of a corporation, for purposes of this subdivision, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(3) “Qualified new corporation” means a corporation that is incorporated under the laws of this state or has qualified to transact intrastate business in this state, that begins business operations at or after the time of its incorporation and that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the taxable year of one million dollars (\$1,000,000) or less. “Qualified new corporation” does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation. This subdivision shall not apply to any corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

(5) For any taxable year beginning on or after January 1, 1999, and before January 1, 2000, if a corporation has qualified to pay five hundred dollars (\$500) for the second taxable year under this subdivision, but in its second taxable year, the corporation’s gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars (\$1,000,000), an additional tax in the amount equal to three hundred dollars (\$300) for the second taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.

(f) (1) Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first taxable year.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (c) of Section 1905 of the Corporations Code, prior to its amendment by the act amending this subdivision, and that does not thereafter do business shall not be subject to the minimum franchise tax for taxable years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

SEC. 55. Section 23332 of the Revenue and Taxation Code is amended to read:

23332. (a) Except in the case of a taxpayer subject to the provisions of Section 23222a, any taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective date of the dissolution or withdrawal, according to or measured by (1) the net income of the preceding income year or (2) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income year, whichever is the lesser amount. The taxes levied under this chapter shall not be subject to abatement or refund because of the cessation of business or corporate existence of any taxpayer pursuant to a reorganization, consolidation, or merger (as defined by Section 23251). In any event, each corporation shall pay a tax not subject to offset for the period in an amount equal to the minimum tax prescribed by Section 23153.

(b) The provisions of subdivision (a) shall be applied only with respect to taxpayers which dissolve or withdraw before January 1, 1973. On and after that date, the tax for the taxable year in which the taxpayer ceases doing business, dissolves or withdraws shall be determined under the appropriate provisions of Section 23151.1, 23153, 23181, or 23183, whichever is applicable.

(c) (1) A corporation shall not be subject to the minimum franchise tax imposed by this chapter for a taxable year if the corporation does all of the following:

(A) Files a timely final franchise tax return for a taxable year with the Franchise Tax Board.

(B) Does not do business in this state after the end of the taxable year for which the final franchise tax return was filed.

(C) (i) In the case of a corporation other than a corporation described in clause (ii), files a certificate of dissolution or surrender with the Secretary of State, in accordance with Sections 1809, 1905, 2112, 6615, 8615, and 12635 of the Corporations Code and Section 3126 of the Financial Code, before the end of the 12-month period beginning with the date the final franchise tax return was filed.

(ii) In the case of a limited liability company that is a corporation pursuant to subdivision (c) of Section 23038, files a certificate of cancellation with the Secretary of State, in accordance with Section 17356 or 17455 of the Corporations Code, before the end of the 12-month period beginning with the date the final franchise tax return was filed.

(2) For purposes of this subdivision, a “final franchise tax return” is a return filed pursuant to Section 18601 on or before the due date of the return, as extended, that the taxpayer designates in the manner prescribed by the Franchise Tax Board as the taxpayer’s final franchise tax return for purposes of the tax imposed under this chapter. A final franchise tax return for purposes of the tax imposed under this chapter is a return filed pursuant to Section 18601 where the taxpayer is not required to file a subsequent return to reflect the imposition of tax under this chapter.

SEC. 56. Section 23334 of the Revenue and Taxation Code is repealed.

SEC. 57. Section 23335 of the Revenue and Taxation Code is amended to read:

23335. (a) Any return filed pursuant to Section 18601 that the taxpayer designates in the appropriate place on the form provided by the Franchise Tax Board as the taxpayer’s final franchise tax return as the result of a dissolution or withdrawal shall be treated as a request for information on how to properly dissolve or withdraw.

(b) If a taxpayer has filed a return as described in subdivision (a), the Franchise Tax Board shall provide the taxpayer with information regarding all documents that are required by this article to be filed with the Franchise Tax Board and the Secretary of State.

SEC. 58. Section 23561 of the Revenue and Taxation Code is amended to read:

23561. No decree of dissolution shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any such decree, or file any other document by which the term of existence of any taxpayer shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender by a foreign corporation of its right to do intrastate business in this State if the corporate powers, rights, and privileges of the corporation have been suspended or forfeited by the

Franchise Tax Board for failure to pay the tax, penalties, or interest due under this part or Part 10.2 (commencing with Section 18401).

SEC. 58.5. (a) Section 5.5 of this bill incorporates amendments to Section 1113 of the Corporations Code proposed by both this bill and AB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 1113 of the Corporations Code, and (3) this bill is enacted after AB 339, in which case Section 1113 of the Corporations Code, as amended by Section 5 of this bill, shall remain operative only until the operative date of AB 339, at which time Section 5.5 of this bill shall become operative.

(b) Section 17.5 of this bill incorporates amendments to Section 6019.1 of the Corporations Code proposed by both this bill and AB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 6019.1 of the Corporations Code, and (3) this bill is enacted after AB 339, in which case Section 6019.1 of the Corporations Code, as amended by Section 17 of this bill, shall remain operative only until the operative date of AB 339, at which time Section 17.5 of this bill shall become operative.

(c) Section 24.5 of this bill incorporates amendments to Section 8019.1 of the Corporations Code proposed by both this bill and AB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 8019.1 of the Corporations Code, and (3) this bill is enacted after AB 339, in which case Section 8019.1 of the Corporations Code, as amended by Section 24 of this bill, shall remain operative only until the operative date of AB 339, at which time Section 24.5 of this bill shall become operative.

(d) Section 31.5 of this bill incorporates amendments to Section 12540.1 of the Corporations Code proposed by both this bill and AB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 12540.1 of the Corporations Code, and (3) this bill is enacted after AB 339, in which case Section 12540.1 of the Corporations Code, as amended by Section 31 of this bill, shall remain operative only until the operative date of AB 339, at which time Section 31.5 of this bill shall become operative.

SEC. 59. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.